

FILED

Dec. 06, 2019

Clerk, U.S. District Court
District of Montana
Great Falls Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMERSON PAUL BIRDTAIL II,

Defendant.

CR 15-09-GF-BMM-JTJ

**FINDINGS AND
RECOMMENDATIONS**

I. Synopsis

Defendant Emerson Paul Birdtail II (Birdtail) has been accused of violating the conditions of his supervised release. Birdtail admitted alleged violations 2 and 3. With respect to alleged violation 1, Birdtail did not admit or deny that he had committed another crime. Birdtail admitted only that he had received criminal citations from a Montana Highway Patrol Officer on or about June 16, 2019. The government did not attempt to prove alleged violation 1.

Birdtail's supervised release should be revoked. Birdtail should be placed in custody for 4 months, with 28 months of supervised release to follow. Birdtail should be allowed to self-report for his term of custody. Birdtail should report for his term of custody on or 12:00 p.m. (noon) on December 20, 2019. Birdtail should serve the first 90 days of supervised release subject to home confinement.

Birdtail should be restricted to his residence at all times except for employment, school, and activities pre-approved by the United States Probation Office.

II. Status

Birdtail pleaded guilty to Assault Resulting in Serious Bodily Injury on April 23, 2015. (Doc. 21). The Court sentenced Birdtail to 34 months of custody, followed by 3 years of supervised release. (Doc. 27). Birdtail's current term of supervised release began on July 27, 2018. (Doc. 52 at 1).

Petition

The United States Probation Office filed an Amended Petition on November 21, 2019, requesting that the Court revoke Birdtail's supervised release. (Doc. 52). The Amended Petition alleged that Birdtail had violated the conditions of his supervised release: 1) by committing another other crime; and 2) by consuming alcohol on two separate occasions.

Initial appearance

Birdtail appeared before the undersigned for his initial appearance on the Amended Petition on December 5, 2019. Birdtail was represented by counsel. Birdtail stated that he had read the petition and that he understood the allegations. Birdtail waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

The Court conducted a revocation hearing on December 5, 2019. Birdtail admitted that he had violated the conditions of his supervised release by consuming alcohol on two separate occasions. With respect to alleged violation 1, Birdtail did not admit or deny that he had committed another crime. Birdtail admitted only that he had received criminal citations from a Montana Highway Patrol Officer on or about June 16, 2019. The government did not attempt to prove alleged violation 1. The violations that Birdtail admitted are serious and warrant revocation of Birdtail's supervised release.

Birdtail's violations are Grade C violations. Birdtail's criminal history category is IV. Birdtail's underlying offense is a Class C felony. Birdtail could be incarcerated for up to 24 months. Birdtail could be ordered to remain on supervised release for up to 32 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 6 to 12 months.

III. Analysis

Birdtail's supervised release should be revoked. Birdtail should be incarcerated for 4 months, with 28 months of supervised release to follow. Birdtail should be allowed to self-report for his term of custody. Birdtail should report for his term of custody on or before 12:00 p.m. (noon) on December 20, 2019.

Birdtail should serve the first 90 days of supervised release subject to home confinement. Birdtail should be restricted to his residence at all times except for employment, school, and activities pre-approved by the United States Probation Office. This sentence is sufficient but not greater than necessary.

IV. Conclusion

The Court informed Birdtail that the above sentence would be recommended to United States District Judge Brian Morris. The Court also informed Birdtail of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Birdtail that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The Court FINDS:

That Emerson Paul Birdtail II violated the conditions of his supervised release by consuming alcohol on two separate occasions.

The Court RECOMMENDS:

That the District Court revoke Birdtail's supervised release and commit Birdtail to the custody of the United States Bureau of Prisons for 4 months, with 28 months of supervised release to follow. Birdtail should be allowed to self-report for his term of custody. Birdtail should report for his term of custody on or before 12:00 p.m. (noon) on December 20, 2019. Birdtail should serve the first 90 days of supervised release subject to home confinement. Birdtail should be restricted to his residence at all times except for employment, school, and activities pre-approved by the United States Probation Office.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A United States district court judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district court judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district court judge, and may waive the right to appear and allocute before a district court judge.

DATED this 6th day of December, 2019.


John Johnston
United States Magistrate Judge